

1007-20085

1158698

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

O.W. Bunker North America, Inc.

*Plaintiff,*

V.

M/V FORTITUDE, IMO NO. 9402079,  
its engines, machinery, tackles, appurtenances,  
apparel, etc. *in rem*,

*Defendant*



Civil Action No. 4:15-cv-3355

### Rule 9(h) – Admiralty

**ORIGINAL VERIFIED COMPLAINT**

Plaintiff, O.W. Bunker North America, Inc., (“OWB-NA” or “Plaintiff”), files its Original Verified Complaint and, pursuant to Rule C of the Supplemental Rules for Admiralty and Maritime Claims and Asset Forfeiture Actions (the “Supplemental Rules”), brings this action against the M/V FORTITUDE (IMO No. 9402079), its engines, machinery, tackles, appurtenances, apparel, etc. *in rem*, and would respectfully show the Court as follows:

## JURISDICTION

1.

This claim arises under the general maritime law of the United States, 28 U.S.C. § 1333, and 46 U.S.C. § 31341, *et seq.* (the “Maritime Lien Act”), and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

**VENUE**

2.

Venue is proper here because the *in rem* defendant M/V FORTITUDE (IMO No. 9402079) is presently located within the U.S. Southern District of Texas.

**PARTIES**

3.

Upon information and belief, the FORTITUDE (IMO No. 9402079) is a general cargo vessel flying under the flag of and registered in Antigua & Barbuda.

4.

As of the morning of November 13, 2015, the FORTITUDE was located at or within the Port of Houston, Texas.

5.

OWB-NA is a Connecticut corporation engaged in business of selling and supplying bunker fuel to vessels.<sup>1</sup> Its address is:

c/o Alvarez & Marsal, LLC  
Attn: Scott Anchin  
600 Madison Avenue, 7th Floor  
NY, NY 10022

**SUPPLY OF BUNKERS TO THE M/V FORTITUDE**

6.

On or about October 24, 2014, Plaintiff sold and supplied bunkers and provided services to the M/V FORTITUDE at or near the Port of New York, New York, in the amount of \$324,150.44.

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<sup>1</sup> On November 13, 2014, O.W. Bunker USA Inc. and its affiliates, O.W. Bunker North America and O.W. Bunker Holding North America Inc., each submitted voluntary petitions for relief pursuant to Title 11 of Chapter 11 of the United States Code to the United States Bankruptcy Court for the District of Connecticut. The cases are now being jointly administered for procedural purposes only under the caption *In re O.W. Bunker North America Inc.*, Case No. 14-51720 (Bankr. D. Conn.). The last four digits of O.W. Bunker USA's and its affiliates' taxpayer identification numbers follow in parentheses: O.W. Bunker Holding North America Inc. (7474), O.W. Bunker North America Inc. (7158), and O.W. Bunker USA Inc. (3556).

7.

On or about October 24, 2014, Plaintiff issued an invoice to the FORTITUDE, its charters and owners, and BBC Project Chartering GmbH & Co. KG (the “Invoice”) in the amount of \$324,150.44 for the supply of bunkers and services on or about October 24, 2014. The due date for satisfaction of the Invoice was November 23, 2014. A true and correct copy of the Invoice is attached hereto as Exhibit “A.”

8.

Despite amicable demand, to date, neither the M/V FORTITUDE, its owners, charterers, nor BBC Project Chartering GmbH & Co. KG has satisfied the Invoice for the supply of bunkers on or about October 24, 2014.

9.

Plaintiff supplied necessary labor, materials, and services with a value of at least \$324,150.44 to the FORTITUDE.

### **CLAIMS**

10.

Pursuant to the Commercial Instruments and Maritime Lien Act, 46 U.S.C. § 31301, *et seq.*, and the general maritime law, Plaintiff holds a maritime lien against the M/V FORTITUDE for the necessary labor, materials, and services provided to the M/V FORTITUDE with a value of at least \$324,150.44, which Plaintiff asserts *in rem*.

### **CONCLUSION AND PRAYER**

11.

Pursuant to Supplemental Rules C and E(5)(a), Plaintiff requests that a Warrant of Arrest issue for the M/V FORTITUDE, and that thereafter the Court fix the principal amount of the bond

or other security to obtain the M/V FORTITUDE's release at an amount sufficient to satisfy the amount of Plaintiff's claim with accrued interest and costs, and further requests that the Court require that the bond or other security be conditioned for the maximum permitted by Rule E(5), which permits up to twice the amount of Plaintiff's claim.

12.

Under Rule C of the Supplemental Rules for Admiralty and Maritime Claims and Asset Forfeiture Actions, Plaintiff is entitled to arrest the M/V FORTITUDE, which upon information and belief is owned/operated by Peter Dohle Schiffahrts-KG.

13.

No waiver is intended of any rights or remedies Plaintiff may have under any agreement among the parties or by law, which rights and remedies are specifically reserved.

**BASED ON THE FOREGOING**, Plaintiff, O.W. Bunker North America, Inc., prays:

1. That process in due form of law according to the practice of this Court in cases of admiralty and maritime jurisdiction issue against the M/V FORTITUDE and her appurtenances, and that she be seized pursuant to Rule C of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions;
2. That the M/V FORTITUDE be condemned and sold to pay the costs of *custodia legis* and damages owed to Plaintiff, O.W. Bunker North America, Inc.;
3. That the maritime liens of Plaintiff, O.W. Bunker North America, Inc., be recognized and enforced with preference and priority over all persons whomsoever; and

4. That the Court enter judgment in favor of Plaintiff, O.W. Bunker North America, Inc., and against the M/V FORTITUDE, *in rem*, in the amount of \$324,150.44, plus pre- and post-judgment interest at a rate of 3% compounded monthly, applicable charges under OWB-NA's standard terms and conditions sections I.5 and I.7, attorney's fees, and any other amount as may be proved herein.

Respectfully submitted,

/s/ Salvador J. Pusateri

Salvador J. Pusateri, T.A. (TX # 24072867)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this November 13, 2015, I electronically filed the foregoing with the Clerk of court by using the CM/ECF system which will send a notice of electronic filing to those who are on the list to receive e-mail notices for this case, have enrolled in this Court's CM/ECF program and otherwise consented to receive notice and service via CM/ECF. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to all non-CM/ECF participants.

/s/ Salvador J. Pusateri